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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,460	05/08/2001	Ulrich Reiners	9784-3U2 (TH8002US/B)	4175
570	7590	02/13/2004		
AKIN GUMP STRAUSS HAUER & FELD L.L.P. ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA, PA 19103-7013				
EXAMINER KRUEER, KEVIN R				
ART UNIT		PAPER NUMBER		
1773				

DATE MAILED: 02/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/851,460

Applicant(s)

REINERS ET AL.

Examiner

Kevin R Kruer

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/072018.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. The rejection of claims 1-4, 6, 7, and 11 under 35 U.S.C. 102(b) as being anticipated by Miyazaki et al (US 4,578,296) has been overcome. The teaching with respect to relative thickness of the filled layer to the unfilled layer is drawn to 2-layer, not 3-layer, laminates.

***Claim Rejections - 35 USC § 103***

3. Claims 1-4, 6, 7, 10, 11, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell et al. (US 4,526,823) in view of Miyazaki et al (US 4,578,296) for reasons of record.
4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell et al. (US 4,526,823) in view of Miyazaki et al (US 4,578,296), as applied above, and further in view of Rosen (Pat. No. 5,635,011) for reasons of record.
5. Claims 1-4, 6, 7, 9-15, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schirmer (US 5,011,735) in view of Miyazaki et al (US 4,578,296) for reasons of record.
6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schirmer (US 5,011,735) in view of Miyazaki et al (US 4,578,296), as applied above, and further in view of Rosen (Pat. No. 5,635,011) for reasons of record.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schirmer (US 5,011,735) in view of Miyazaki et al (US 4,578,296), claims 1-4, 6, 7, 9-15, 18, and 20 above, and further in view of Bochow et al. (US 5,449,552) for reasons of record.

8. Claims 16, 17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schirmer (US 5,011,735) in view of Miyazaki et al (US 4,578,296), as applied to claims 1-4, 6, 7, 9-15, 18, and 20 above, and further in view of Applicant's Admissions for reasons of record.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell et al. (US 4,526,823) or Schirmer (US 5,011,735) in view of Miyazaki et al (US 4,578,296) as applied above, and further in view of Blemburg et al. (US 5,108,844) for reasons of record.

10. Claims 1, 2, 4, 6-11, 13, 14, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bochow et al. (US 5,449,552) in view of Hattori et al (US 4,567,089) for reasons of record.

### ***Response to Arguments***

Applicant's arguments filed October 30, 2003 have been fully considered but they are not persuasive.

The following arguments with respect to Miyazaki are moot because the rejection of claims 1-4, 6, 7, 11, and 18 under 35 U.S.C. 102(b) as being anticipated by Miyazaki has been overcome by argument:

-The adhesive layer taught in Miyazaki would not read on the claimed barrier layer.

- The polyolefin layer taught in Miyazaki is not a sealing layer.
- The teachings of Miyazaki are drawn to a cup, not a film for forming sealing packages.

The examiner will not address these arguments any further since they are deemed not be relevant to the outstanding rejections.

Applicant further argues that the primary references all lack a teaching with respect to the claimed thickness ratio. The examiner agrees that Farrell and Schirmer each fails to disclose the claimed thickness ratio but notes that neither reference was relied upon for such a teaching. Rather, Miyazaki was relied upon to provide motivation to one of ordinary skill in the art to control the relative thickness of the filled and unfilled layers. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). With respect to Bochow, the examiner maintains the position that the thickness ratios taught in Bochow overlap the claimed thickness ratios, and therefore anticipate said ratios for the portion of the ranges that overlap.

Applicant further argues that the thickness ratio of Miyazaki is drawn to a two-layer structure, not a laminate of 3 or more layers, as presently claimed. Said argument is sufficient for overcoming the rejection of claims 1-4, 6, 7, 11, and 18 under 35 U.S.C. 102(b) as being anticipated by Miyazaki et al (US 4,578,296). However, the examiner maintains the position that the teachings of

Art Unit: 1773

Miyazaki would have motivated one of ordinary skill in the art to vary the ratio of the total thickness of the unfilled layers to the thickness of the filled layers of the laminates taught by Schirmer and Farrell. Specifically, Miyazaki teaches that the thickness of a filled layer (i.e., the inner layer of Miyazaki) to the unfilled layer (i.e. the outer layer of Miyazaki) is critical to maintaining the "high quality impression" of the laminate (col 8, lines 5+). The examiner understands "high quality impression" to refer to the cups opacity and gloss. The examiner finds support for said interpretation in column 2, lines 14+ wherein it is stated that products "produced by thermoforming... are relatively low in whiteness, and because of their characteristic luster, inevitably give a strong impression that they are made of synthetic resin.... that is to say, such {products} do not give a **high quality impression** as in paper {products}." The terms "luster" and "glossiness" are understood to be synonyms in the reference. The thermoformed product of Miyazaki exhibits not just the appearance, but also the touch and the feeling characteristics of paper (col 6, lines 25-29). Feeling is evaluated by measuring the laminate's glossiness (see Table 2, footnote 5). Thus, the examiner maintains the position that Miyazaki teaches that the thickness ratio of the filled to unfilled layer affects the appearance and feel of the laminate.

The teaching that the thickness ratio must be decreased when the outer layer does not contain any inorganic filler to maintain a high quality impression further supports the examiner's position. Miyazaki is explicitly teaching that the film's paper-like appearance is deteriorated when the unfilled layer's thickness is

Art Unit: 1773

too thick. Thus, the thickness of the unfilled layer should be minimized to ensure the desired "high quality impression."

Applicant further argues that Miyazaki does not form the proper basis for an obviousness rejection with any of the remaining prior art references because Miyazaki is not related to the same type of packaging art as the primary references. The examiner initially notes that the standard to determine if a prior art reference is analogous is if the reference is in the field of applicant's endeavor or, if not, the reference is reasonably pertinent to the particular problem with which the inventor was concerned. The examiner takes the position that Miyazaki meets both requirements. Specifically, the examiner understands Miyazaki to be in the same field of endeavor as Schirmer and Farrell in that they are all drawn to filled thermoformed laminates. Furthermore, the examiner understands Miyazaki to be reasonably pertinent to the particular problem with which the inventor is concerned-the appearance and texture of a filled thermoformed laminate.

Applicant makes no arguments with respect to Bochow in view of Hattori. Therefore, the rejection is maintained.

#### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory

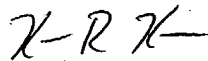
Art Unit: 1773

action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 703-305-0025. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on 571-272-1516. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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